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October 3, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: *Ex Parte* Presentation in IB Docket No. 96-111
Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States

Dear Mr. Caton:

This afternoon John Stern of Loral Space & Communications Ltd. and myself met with James L. Ball and Laurie Sherman to discuss Loral's comments in the above-captioned proceeding. Enclosed are copies of materials presented to Commission staff at the meeting.

Respectfully submitted,

Laurence D. Atlas, ns for

Laurence D. Atlas

cc: James L. Ball
Laurie Sherman

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DISCO II

Loral supports basic DISCO II FNPRM proposal to eliminate ECO-Sat test for WTO countries.

The Commission should seek further comment before establishing a market entry test for affiliates of Intergovernmental Satellite Organizations (IGOs).

There is no legal or policy rationale for treating IGO affiliates differently based on their date of incorporation.

The Commission should not reverse the successful deregulatory policy of DISCO I by imposing ECO-Sat on U.S. licensees seeking to serve non-WTO route markets.

Terms and conditions imposed on foreign licensed satellites should be equivalent to those imposed on U.S. licensees.

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1. The Commission Should Seek Further Comment Before Establishing Market Entry Policies For IGO Affiliates

The FCC and GAO have repeatedly highlighted the threat to competition posed by the unique relationships between IGOs (Intelsat and Inmarsat), IGO signatories, and IGO affiliates. Issues include:

- IGO-affiliate cross-subsidies, IGO-affiliate asset transfers, privileged access to markets offered by signatories, and exclusive financial benefits to affiliates from their unique relationships with IGOs, former IGOs and IGO signatories.

- These and other complex issues re IGO affiliate entry policies should be addressed separately based on a full and adequate record.

- Neither IGOs nor affiliates are WTO members and there is thus no need to determine IGO affiliate entry policies by 1/1/98.

- The standard set out in the FNPRM ("significant risk to competition") provides no advance guidance on the nuts and bolts issues of privatization.

- Privatization efforts are currently ongoing. Unless FCC provides advance guidance, it will be presented with a completed restructuring that it must approve or reject.

- On the domestic side, FCC has conducted rulemakings to give guidance in similar circumstances (separate affiliate safeguards under Section 272, manufacturing under Section 273).

Difficult issues on which the record needs development include:

- Should an IGO affiliate be deemed "a company" to a WTO member? If so, for what reasons? Under what criteria? If an "affiliate" that is 100 percent owned by an IGO is incorporated in a WTO country, can it be a "company of" that WTO member?

- What level of ownership or investment (if any) in affiliates by IGOs, IGO signatories or IGO predecessors is *per se* anticompetitive? What level of ownership is *de minimis* and raises no competition concerns?

- To what extent must an affiliate be operationally independent (common employees, common directors, other residual links with IGO, privileges and immunities)?

- How can the FCC ensure that dealings between an affiliate and IGO are at arm's-length?

- Which IGO assets may be transferred to the affiliate in non-market transactions without unduly affecting competition?

2. The Commission Should Treat All IGO Affiliates In The Same Fashion

Neither the Commission nor any commenter has offered any rationale for distinguishing "existing" IGO affiliates from "future" affiliates:

- The Commission, without offering an explanation or rationale, draws a distinction between "future" affiliates and IGO affiliates that have already incorporated.

- This distinction is without legal support and could lead to undesirable and unintended results. The principles embodied in the WTO Agreement suggest that if the U.S. extends WTO privileges to one IGO affiliate it would have to extend the same privileges to all other IGO affiliates.

- It would violate the Administrative Procedure Act to accord different treatment to various IGO affiliates based on date of incorporation, especially since other types of entities are not treated differently based on their date of incorporation.

- ICO's unsupported claims that it is not an IGO affiliate at all and that it should be treated differently from other IGO affiliates, based on its asserted *de jure* independence from its majority owners (Inmarsat and signatories) are meritless.

3. The Commission Should Not Reverse the Successful Flexible Policy Of DISCO I By Imposing ECO-Sat On U.S. Licensees Seeking To Serve Non-WTO Route Markets

- To do so would unnecessarily burden U.S. licensees and reverse the effective deregulatory regime of DISCO I which allows U.S. licensees to serve any foreign country provided that requisite foreign approvals are secured.

- Nothing in the WTO, including national treatment, requires this burdensome approach.

- Competitive concerns regarding non-WTO routes are better addressed by extending the prohibition on exclusive arrangements to non-U.S. licensees desiring to enter the U.S. market.

4. Terms And Conditions Imposed On Foreign Licensed Satellites Should Be Equivalent to Those Imposed On U.S. Licensees

- For example, foreign licensees should be subject (where applicable) to:
  - -- terrestrial relocation costs
  - -- construction milestones
  - -- universal service obligations